



GEORGIA PUBLIC BROADCASTING

WGTV

FCC FILE NUMBER EB-06-IH-0920

MASTERPIECE THEATRE EPISODE



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, S.W., Suite 4-C330
Washington, D.C. 20554

OCT 27 2006



VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED
AND FACSIMILE AT 404-685-2407

Georgia Public Telecommunications Commission
260 14th Street N.W.
Atlanta, Georgia 30318

Re: Station WGTW(TV), Athens, Georgia
File No. EB-06-IH-0920

Dear Licensee:

The Enforcement Bureau is investigating allegations contained in the enclosed redacted complaint (the "Complaint") that the Georgia Public Telecommunications Commission (the "Licensee") broadcast prohibited material over the above-referenced station (the "Station"), in violation of Title 18 U.S.C. § 1464 and Section 73.3999 of the Commission's rules.¹ Specifically, it is alleged that indecent material was aired during the Station's broadcast of "Henry VIII" on January 8, 2006, at approximately 9:00 a.m. or p.m. We direct the Licensee, pursuant to Sections 4(i), 4(j), 308(b) and 403 of the Communications Act of 1934, as amended,² to provide the information and Documents, as defined herein, within thirty (30) calendar days from the date of this letter.

Instructions

Request for Confidential Treatment. If the Licensee requests that any information or Documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and Documents, a statement in accordance with Section 0.459 of the Commission's rules.³ Requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b). Accordingly, "blanket" requests for confidentiality of a

¹ See 47 C.F.R. § 73.3999.

² See 47 U.S.C. §§ 154(i), 154(j), 308(b), and 403.

³ See 47 C.F.R. § 0.459.

large set of Documents are unacceptable. Pursuant to Section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of Section 0.459.

Claims of Privilege. If the Licensee withholds any information or Documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item, the numbered inquiry to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

Method of Producing Documents. Each requested Document, as defined herein, shall be submitted in its entirety, even if only a portion of that Document is responsive to an inquiry made herein, unless the Document is a recording or transcript, in which case it should be provided only for the period of time of the broadcast specified in the pertinent inquiry herein. This means that the Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these inquiries must also be submitted.

Identification of Documents. For each Document or statement submitted in response to the inquiries below, indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the Document was retrieved. If any Document is not dated, state the date on which it was prepared. If any Document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Licensee must identify with reasonable specificity all Documents provided in response to these inquiries.

Documents No Longer Available. If a Document responsive to any inquiry made herein existed but is no longer available, or if the Licensee is unable for any reason to produce a Document responsive to any inquiry, identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the Licensee is otherwise unable to produce it.

Retention of Original Documents. With respect only to Documents responsive to the specific inquiries made herein and any other Documents relevant to those inquiries, the Licensee is directed to retain the originals of those Documents for twelve (12) months from the date of this letter unless (a) the Licensee is directed or informed by the Enforcement Bureau in writing to retain such Documents for some shorter or longer period of time or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, the Licensee must retain all such Documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of

Justice or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

Continuing Nature of Inquiries. The specific inquiries made herein are continuing in nature. The Licensee is required to produce in the future any and all Documents and information that are responsive to the inquiries made herein but not initially produced at the time, date and place specified herein. In this regard, the Licensee must supplement its responses (a) if the Licensee learns that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive Documents or information are acquired by or become known to the Licensee after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless (1) the Licensee is directed or informed by the Enforcement Bureau in writing that the Licensee's obligation to update the record will continue for some shorter or longer period of time or (2) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the release of such item.

Unless otherwise indicated, the period of time covered by these inquiries is January 8, 2006, to the present.

Definitions

For purposes of this letter, the following definitions apply:

"Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

"Broadcast," when used as noun, shall mean audible sounds or language transmitted or disseminated over a station during the course of a radio or television broadcast.

"Broadcast," when used as a verb, shall mean the transmission or dissemination of radio or television communications intended to be received by the public. The verb "broadcast" may be used interchangeably with the verb "air."

"Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or

graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any broadcast, radio program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tape, disks and such codes or instructions as will transform such computer materials into easily understandable form).

Inquiries: Documents and Information to be Provided

1. State whether the Licensee broadcast any or all of the material described in the Complaint over the Station on January 8, 2006 at 9:00 a.m. or p.m. Provide a recording of the broadcast on DVD or a VHS videocassette tape, including the complained-of material plus the 15 minutes aired before and after it, and a written transcript of the recording.
2. With regard to the broadcast referred to in the response to Inquiry 1 above, if the programming described in the Complaint does not accurately reflect the material aired over the Station, describe any inaccuracies.
3. Provide copies of any and all Documents relating or referring to each broadcast referred to in the response to Inquiry 1 above, and of any and all other Documents that provide the basis for or otherwise support the responses to Inquiries 1 and 2 above.

Instructions for Filing Responses

We direct the Licensee to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Licensee with personal knowledge of the representations provided in the Licensee's response, verifying the truth and accuracy of the information therein and that all of the information and/or recordings requested by this letter which are in the Licensee's possession, custody, control or knowledge have been produced. If multiple Licensee employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of the Licensee noted above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual, rather than his or her own knowledge, provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with

Section 1.16 of the Commission's rules,⁴ and be substantially in the form set forth therein.

To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.⁵ Failure to respond appropriately to this letter of inquiry may constitute a violation of the Communications Act and our rules.⁶

The Licensee shall direct its response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002, to the attention of Debbie J. Byrd, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, with a copy to Elizabeth Valinoti, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Debbie J. Byrd, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554, with a copy to Elizabeth Valinoti, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554. The Licensee shall also, to the extent practicable, transmit a copy of the response via email to debby.byrd@fcc.gov and to elizabeth.valinoti@fcc.gov.

The Licensee shall also serve its response and supporting Documentation upon the complainant (at the address listed below), who will have ten (10) days from receipt to file a reply, with a copy to the Licensee. The Licensee and the complainant are reminded that this is a restricted proceeding under the Commission's *ex parte* rules,⁷ so that neither party may make a presentation (*i.e.*, a communication directed to the merits or outcome

⁴ See 47 C.F.R. § 1.16.

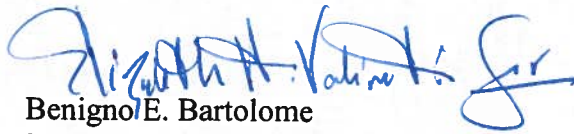
⁵ See 18 U.S.C. § 1001; *see also* 47 C.F.R. § 1.17.

⁶ See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, n. 36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003).

⁷ See 47 C.F.R. §§1.1200 – 1216.

of a proceeding) to decision-making personnel which, if written, is not served on the other party or, if oral, is made without advance notice to the other party and without opportunity for them to be present.

Sincerely,



Benigno E. Bartolome
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

Enclosure

cc: Ms. Julie A. Entrekin
4722 Norman Drive
Kennesaw, Georgia 30144


EB-06-14-0920

FOR JULIE ENTREKIN

Complaint Type:

Account Type:

☐ Congressional Complaint ☐ C

IC Number:	06-WB11393145	Case Type:	
Date Received:	01/20/2006 	Complainant:	Julie A Entrekina
Date Entered:	01/20/2006	Date Assigned:	
Entered By:	FCC_NOTES01	Date Reassigned:	
Assigned To:		Service Date:	
Date Closed:		Response Date:	
Closed By:		Original Analyst:	
Close Letter Needed?	<input checked="" type="radio"/> Yes <input type="radio"/> No	Purged By:	Purged Date:
		Removed By:	Removed Date:

Current Status: New - Not Assigned

Associated Case:

Complaint Summary:

My husband and I, along with three of our teenagers began watching Henry VIII after it had already begun so we did not hear the advisory at the beginning. However, even with the advisory, I don't believe Henry VIII should have been aired on public broadcasting. It had a sex scene that showed more than it should have for young teenagers, and in another scene, which took a minute to realize what was happening, Henry was raping his wife. Each time we had to quickly change the channel to protect our children from indencency. I did file a complaint with the broadcaster.

Apparent Carrier(s):

☐ Yes<<< Check here if you wish to serve both a Wireline and Wireless carrier.

Problem Number:

Title: None	First Name: Julie	Middle Initial: A	Last Name: Entrekina
Contact Name:	Julie A Entrekina	Best Time to Call:	
Contact Number:	6782130719 Ext.	Consumer's Telephone Number:	Ext.
Fax Number:		TTY Number:	
Email Address:	julie@officenetworkusa.com	Internet Address:	
PO Box:		Address:	4722 Norman Drive
City:	Kennesaw	State: GA	Zip: 30144

On Behalf Of:	
Company Name:	
Party's Name:	Relationship with the P:
Party's Contact Number: Ext.	PO Box:
	Address:
	City:State:Zip:
Other Party that can be contacted?	
Name:	Relationship:
Contact Number: Ext.	Address:
	City:, State: Zip:
**Amount of credit FCC effort generated:	Duplicate Credit Checked: <input type="radio"/> Yes <input checked="" type="radio"/> No

Have you paid any of the disputed charges?

Did the company billing for these charges adjust or refund some or all of the disputed charges?

If yes, what was the amount of the adjustment or refund?

a. Name of carrier(s) or company(ies) involved in your complaint: stock alert-bcr

b. Telephone number for the carrier(s) or company(ies) involved with your complaint, including area code: Phone: Ext:

c. Which type of service is involved with your complaint:

TCPA Information from 475

1. the telephone number of the individual or company who called or faxed you:

Ext:

2. your telephone number(s) on which the call or fax was received:

Ext:

3. a description of the telemarketing call, pre-recorded message, or unsolicited fax, including an identification of the company whose products or services were being advertised, and any phone numbers that were included in the call or fax:

4. the "opt-out" number(s) provided in the call(s) or on the fax(es):

(List number(s) given in the call(s) or fax(es) for you to contact if you do not want to receive any additional calls or faxes.)

Ext:

5. Have you: (a) purchased anything from the company being advertised in the call or fax;

(b) made an inquiry or application to that company; or (c) given consent to the company to send you the call or fax? If so, please describe and state when you had such contact with the company.

Broadcast Information from 475B

(1) Date of Program: 1/8/06

(2) Time of Program: 9:00

(3) Network:

(4) Call Sign, Channel OR Frequency of the station on which you viewed/heard the material:

Georgia Public Broad

(5) City and State Where Program Was Viewed:

Atlanta, Georgia

(6) Name of Program or DJ/Personality/Song/Film:

Henry VIII

Updated? ☐ Yes ☒ No

ANALYSIS SECTION

Correspondence Type: ☐ Complaint ☐ Inquiry Source Code:

Apparent Carrier(s):

Re-Serve Carrier(s):

Responding Carrier(s):

Assigned Subject Code:

Supervisor Check: ☐ Yes ☒ No

Activity Code: Direct

Assigned Code Acronym:

Final Responsible Party:

Sub-Category:

Copy of Response Sent to Consumer by Carrier?: ☐ Yes ☐ No

Mediation with Carrier/Complainant?: ☐ Yes ☐ No

Response Type:

Referral Information

Date Referred:

Referred To:

Agency Name(s):

Company Name(s):

Consumer Referral Letter Agency Refer

Create TCPA

Deferment Information

Date Deferred:

Reason:

Date UnDeferred:

Extension Information:

Extension Requested: ☐ Yes ☒ No

Extension Granted: ☐ Yes ☒ No

SERVE INFORMATION

COMMENTS

Comment History:

DOCUMENT HISTORY

Created by FCC_NOTES01
Last Edited by

Date 01/20/2006 08:43 AM
Date

AUG - 8 2007

EXECUTIVE DIRECTOR'S
OFFICE

For the PIF

December 18, 2006

Ms. Debbie J. Byrd
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 4-C330
Washington, DC 20554

Re: Station WGTW(TV), Athens, Georgia
File No. EB-06-IH-0920

Dear Ms. Byrd:

This letter responds to the Enforcement Bureau's October 27, 2006 Letter of Inquiry, concerning a complaint (the "Complaint") that, at approximately 9:00 a.m. or 9:00 p.m., on January 8, 2006, noncommercial educational television Station WGTW(TV) broadcast a 90-minute historical drama entitled "Henry VIII" (the "Program") that allegedly contained indecent material in violation of the Commission's rules.¹ The Complaint, filed by a resident of Kennesaw, Georgia, provides in its entirety:

My husband and I, along with three of our teenagers began watching Henry VIII after it had already begun so we did not hear the advisory at the beginning. However, even with the advisory, I don't believe Henry VIII should have been aired on public broadcasting. It had a sex scene that showed more than it should have for young teenagers, and in another scene, which took a minute to realize what was happening, Henry was raping his wife. Each time we had to quickly change the channel to protect our children from indecency [sic]. I did file a complaint with the broadcaster.

You have asked GPTC to respond to specific inquiries regarding the broadcast of the Program. Before responding to the questions posed by your Letter of Inquiry, GPTC

¹ On November 9, 2006, Elizabeth Valinoti granted Georgia Public Telecommunications Commission ("GPTC"), licensee of Station WGTW, an extension until December 18, 2006 to respond to the Bureau's Letter of Inquiry.

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December 18, 2006
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questions whether the Complaint relates to it. The Complaint did not identify GPTC or Station WGTW as the station broadcasting the program, but only indicated that it was a public television station. There are two public television stations that serve Kennesaw, Georgia: Station WGTW and Station WPBA-TV, Atlanta, Ga. Station WPBA-TV is licensed to the Atlanta School Board.

The fact that the Complaint is directed at Station WGTW is further called into question by the complainant's assertion that she filed "a complaint with the broadcaster." Following the January 8, 2006 broadcast of the Program, GPTC did not receive any viewer complaints about the Program. Although GPTC maintains carefully detailed records of calls, mail and email from the public, GPTC has been unable to locate the complaint or a record of it.

In the Commission's *Omnibus Indecency Order*² and again in its decision on remand from the Court of Appeals,³ the Commission held that, because of the sensitive First Amendment considerations involved in its review of programs, it would impose forfeitures for the broadcast of indecent material only on those licensees "whose broadcast of the material was actually the subject of a viewer complaint to the Commission."⁴ In justifying its change in policy, the Commission explained that it was committed "to an appropriately restrained enforcement policy."⁵ Given the Complaint's failure to identify the station on which the program was broadcast and GPTC's inability to find any evidence that it received a complaint, the Commission should exercise its restrained enforcement policy by dismissing this Complaint, which fails to identify either GPTC or Station WGTW.

² *In re Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Notices of Apparent Liability and Memorandum Opinion and Order, 21 FCC Rcd. 2664 (2006) ("*Omnibus Indecency Order*"), vacated in part by *In re Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Order, FCC 06-166, 2006 WL 3207085 (rel. Nov. 6, 2006).

³ *In re Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, *supra*, 2006 WL 3207085, ¶¶ 76-77.

⁴ *Omnibus Indecency Order* ¶ 32. This approach differed from some previous decisions proposing forfeitures against all network affiliates that broadcast the apparently indecent programming, even if the Commission had not received a complaint against such affiliates.

⁵ *Id.*; see also ¶¶ 42, 86 (stating same).

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However, since GPTC broadcast the program in question, set forth below is a discussion of the Program, followed by GPTC's response to the Bureau's specific inquiries.

I. The Program Is A Masterpiece Theatre Historic Drama Nationally Distributed by PBS.

The Program, which GPTC aired on Station WGTW on January 8, 2006 at 9:00 p.m., is the first episode in a two-part historical drama about the 38-year reign of Henry VIII as monarch of England.⁶ The Program was presented on PBS stations throughout the country as part of Masterpiece Theatre, the longest running prime time drama series on American television. As the Complaint acknowledges, the Program contained a viewer advisory at the beginning of the Program to warn parents that the Program was intended for mature audiences.⁷

The two-part series explores the political and religious strife that befalls England as a result of Henry VIII's historic struggle to secure a male heir to the throne. The first episode, which is the subject of the Complaint, recounts the tragic story of the first two of Henry's six marriages -- to Katherine of Aragon and Anne Boleyn. The Program depicts the progression of Henry and Katherine's relationship of many years, at one-time filled with love and tenderness, then later, rejection for her failure to give birth to a healthy son. As his marriage to Katherine is falling apart, Henry becomes captivated by Anne Boleyn, a beautiful, quick-witted young woman, who refuses to become his mistress. In order to marry Anne, Henry separates England from the Catholic Church of Rome, starts a new Church of England, with himself, as monarch, as its head, divorces his wife of more than 20 years, and strips her of her title as Queen. He quickly marries Anne, who soon after gives birth to a baby girl. She later suffers several miscarriages and appears to be unable to give Henry the male heir for whom he is desperate. Once confident and powerful, Anne becomes insecure and jealous, and her relationship with Henry and with the Court become strained. She ultimately is tried and convicted on false charges of adultery and is beheaded.

⁶ The two-part series previously aired in November 2004.

⁷ The advisory provided: "The following drama contains scenes of graphic violence and is intended for mature audiences. Viewer discretion is advised."

II. The Program Is Not Indecent Under the Commission's Standard.

For the reasons set forth below, GPTC rejects the notion that the Program was indecent. It was a dramatic work of the highest quality, as typifies the programs on Masterpiece Theatre, and dealt with important historical events that are neither salacious, titillating, or otherwise inappropriate for its targeted audience.

A. The Commission's Standard Requires An Assessment of the Overall Context of the Material.

Under the Commission's precedent, a program is indecent only if it describes or depicts sexual or excretory organs or activities in terms "patently offensive" as measured by contemporary community standards for the broadcast medium.⁸ In deciding whether broadcast material is patently offensive, the Commission has emphasized that the "full context in which material appeared is critically important," and has set forth three "principal factors" for conducting this contextual assessment:

- (1) the explicitness or graphic nature of the description [or depiction];
- (2) whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities; and
- (3) whether the material panders to, titillates or shocks the audience.⁹

The Commission has adopted a safe harbor period of 10:00 p.m. to 6:00 a.m., during which programming is not subject to the Commission's prohibition on indecency.¹⁰

⁸ *Omnibus Indecency Order* ¶ 12.

⁹ *Id.* ¶ 13.

¹⁰ *Id.* ¶ 8 (citing 47 C.F.R. § 73.3999; Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992); and *Action for Children's Television v. FCC*, 58 F.3d 654 (D.C. Cir. 1995) (*en banc*) ("ACT IP"), *cert. denied* 516 U.S. 1072 (1996)).

B. The Complained Of "Sex Scene" Is Not Patently Offensive In Light of the Overall Context of the Scene and the Program.

The "sex scene" described in the Complaint is a tender and emotional scene depicting the first intimate encounter between Henry and Anne on the night of their wedding. The scene begins with Henry and Anne dancing in their wedding attire. While the background music continues, Henry and Anne are shown in bed together. Anne is on top of Henry. Only her bare back and side are exposed and only his bare chest is exposed. The couple appears to be briefly engaged in suggestive activity, after which they discuss their feelings about the serious events that have brought them together and Anne's apprehension that Henry will lose interest in her unless she can produce a son. The scene ends with the couple embracing and Henry assuring her of his affection for her and not because she might give birth to a son.

When viewed in the full context in which the material appears, the scene does not meet any of the principal factors for a finding that it is "patently offensive." The scene does not dwell on or repeat sexual organs or activities. The total scene in bed is approximately 73 seconds in length, only 10 seconds of which depicts physical activity suggestive of sexual activity.¹¹ The remainder of the brief scene shows the couple discussing their feelings of love and apprehension about their marriage.¹² Nor is the scene graphic or explicit. Rather, the scene is carefully shot to show only brief images of

¹¹ The complained of scene was aired only seconds before the Commission's safe harbor period. The scene began, with the couple in bed, at 9:59:53 p.m. Thus, only seven seconds of the scene aired prior to the safe harbor period. *Compare In re Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Order, FCC 06-166, 2006 WL 3207085, ¶ 18 (rel. Nov. 6, 2006) (noting that relevant contextual factors include the time of day and finding that broadcast aired early in prime time, among other things, favored finding of indecency).

¹² See Letter from Norman Goldstein, Chief, FCC Complaints and Political Programming Branch, Enforcement Division, Mass Media Bureau (File No. 180001-TRW) (May 26, 1999) (concluding that a scene from the movie *Catch 22* was not indecent, even though it contained full frontal nudity and reasoning "the segment of the movie which included nudity was very brief and appeared in the context of a full length drama, the primary theme of which was the horrors of war.")

Anne's bare back and side.¹³ Her long hair completely covers her chest from exposure.¹⁴ Only Henry's chest and head are seen.

The scene does not pander, is not titillating nor included to shock the audience. To the contrary, this scene is a significant turning point in the relationship between Henry and Anne and marks a major development in Henry's reign over England. Henry, having gone to extreme lengths for Anne to become his wife, while enduring Anne's rebuffs at his affection, shows love for his new bride and hope for the prospect of having a legitimate male heir. Anne, having finally become the Queen after having manipulated Henry prior thereto, reveals a glimpse of insecurity, suggesting a shift in the power dynamic of their relationship and foreshadowing that Henry will cast her aside when she cannot produce a male heir. Thus, this scene is an essential element of the Program's story line.¹⁵ Finally, the subject of the Program, like Masterpiece Theatre presentations generally, was likely to attract a predominantly adult audience.¹⁶

In light of the overall context of the film, the challenged scene is not indecent. Any finding by the Commission to the contrary would be inconsistent with Commission precedent declining to find indecency in serious dramatic, documentary and news programming. For instance, the Commission found that an unedited broadcast of the film

¹³ See *In re Complaints against Various Television Station Licensees Regarding the ABC Television Network's November 15, 2004, Broadcast of "Monday Night Football"*, Memorandum Opinion and Order, 20 FCC Rcd. 5481, ¶ 2 (2005) (finding not indecent a scene in which Nicolette Sheridan, "wearing only a towel, seeks to seduce [NFL player Terrell] Owens" by "drop[ping] her towel" so the "camera shows her from the back, nude from the waist up" as "she ... leaps into his arms").

¹⁴ See *Omnibus Indecency Order* ¶ 151 (finding that a scene from the show *Alias* was not patently offensive, considering among other things, the camera angle from which the scene is shot).

¹⁵ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Boone Smith Regarding "Warrior Queen" and "Take a Girl Like You" (File No. EB-03-IH-0697) (Dec. 8, 2004) (finding that rape scene in biographical drama was "core element" of the story line).

¹⁶ *In re Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Order, FCC 06-166, 2006 WL 3207085, ¶ 18 (rel. Nov. 6, 2006) (noting that relevant contextual factors include the program content as it affects the composition of the audience as well as the time of broadcast).

"Schindler's List", a historical drama about the Holocaust, was not indecent despite its depiction of full frontal nudity, in light of the full context of the program, including the subject matter of the film, the manner of presentation and the warnings that accompanied the film.¹⁷ Likewise, the Enforcement Bureau found that a rape scene in "Warrior Queen", a biographical drama set in ancient Britain that portrays Queen Boudica's leadership of a revolt against the occupying Roman army, was "a core element of the biographical story line, involving the origination of the title character's hatred for the Romans."¹⁸

The Commission's *Omnibus Indecency Order* further supports a finding that the challenged scene is not indecent. The Commission concluded, among other things, that a scene from the program *Alias*, similar to the scene at issue in *Henry VIII*, was not indecent. The *Alias* scene begins with a male and female character embracing and then shows the characters passionately kissing and caressing in bed and engaged in physical activity that is highly suggestive of, if not clearly portraying, sexual activity. One character is positioned on top of the other for the duration of the scene and, at the end of the scene, the male character rolls off of the female character, and the two stare at each other. The scene is accompanied by a suggestive, slow ballad performed by U2. The Commission concluded that the *Alias* scene was not patently offensive because the scene did not depict sexual organs or activities in a graphic or explicit manner and the sexual activity was not "presented in a pandering, titillating or shocking manner. While the episode shows the characters kissing, caressing, and rubbing in bed, the overall context,

¹⁷ See *In re WPBN/WTOM License Subsidiary, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd. 1838 (2000).

¹⁸ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Boone Smith Regarding "Warrior Queen" and "Take a Girl Like You" (File No. EB-03-IH-0697) (Dec. 8, 2004) (citing *In re WPBN/WTOM License Subsidiary, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd. 1838 (2000)); see also *In re Complaints Against Various Television Licensees Regarding Their Broadcast on November 11, 2004, of the ABC Television Network's Presentation of the Film "Saving Private Ryan,"* Memorandum Opinion and Order, 20 FCC Rcd. 4507 (2005) (concluding that use of language found indecent in other contexts would not render the work patently offensive, in light of the overall context of the film); *Letter to Peter Branton re All Things Considered*, 6 FCC Rcd. 610 (1991) (finding that a National Public Radio news broadcast of a recorded wiretap of convicted organized crime figure John Gotti was not indecent despite its use of numerous words found indecent elsewhere).

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including the camera angle, the background music, and the immediately preceding scene, is not shocking in contrast to the clear and graphic depictions of sexual intercourse."¹⁹ A similar outcome is required with respect to this scene.

C. The Rape Scene Was Broadcast During the Safe Harbor Period and Thus Must Be Dismissed

The second scene at issue in the Complaint was broadcast at approximately 10:06 p.m. and was thus within the safe harbor.²⁰ As such, the Commission should dismiss this aspect of the Complaint promptly.

In all events, the scene was not indecent; it depicted an argument between Henry and Anne about the issues that come to epitomize their marriage and his reign as King -- the fact that Anne has not given birth to a male heir to the throne and Henry's resulting interest in women other than Anne, his current wife. The scene did not pander, was not titillating nor was it intended to shock the audience. Rather, it was an essential element of the plot, showing the deterioration of the marriage and Anne's loss of power over Henry because of her failure to produce a son.²¹

¹⁹ *Omnibus Indecency Order*, ¶ 151.

²⁰ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Boone Smith Regarding "Warrior Queen" and "Take a Girl Like You" (File No. EB-03-IH-0697) (Dec. 8, 2004) (declining to consider a sex scene and offensive language that aired after 10:00 p.m.).

²¹ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Boone Smith Regarding "Warrior Queen" and "Take a Girl Like You" (File No. EB-03-IH-0697) (Dec. 8, 2004) (finding that rape scene in biographical drama was "core element" of the story line).

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III. GPTC's Responses to Specific Questions in the Letter of Inquiry.

- 1. State whether the Licensee broadcast any or all of the material described in the Complaint over the Station on January 8, 2006 at 9:00 a.m. or p.m. Provide a recording of the broadcast on DVD or a VHS videocassette tape, including the complained-of material plus the 15 minutes aired before and after it, and a written transcript of the recording.**

As described above, GPTC broadcast the 90-minute Program on WGTW beginning at 9:00 p.m. on January 8, 2006, although the "sex scene" referenced in the Complaint aired at approximately 9:59:53 p.m. and the "rape" scene referenced in the Complaint aired at approximately 10:06 p.m. Part 2 of the two-part mini-series was aired the following week on Sunday, January 15, 2006, at 9:00 p.m.

Set forth as Exhibit 1 is the Program transcript provided by the producing PBS Station, WGBH. GPTC also submits along with this letter a DVD copy of the Program.

- 2. With regard to the broadcast referred to in the response to Inquiry 1 above, if the programming described in the Complaint does not accurately reflect the material aired over the Station, describe any inaccuracies.**

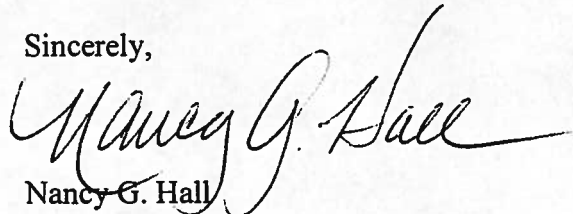
For the reasons fully described above, the Complaint does not accurately reflect the material that GPTC broadcast on January 8, 2006. The Complaint mischaracterizes "a sex scene that showed more than it should have for young teenagers." This brief scene does not depict any sexual organs and carefully portrays an intimate encounter between Henry and his wife Anne that is integral to the plot of the historical drama. The second scene was aired after the safe harbor period and therefore is outside of the bounds of the Commission's indecency enforcement. Finally, GPTC has no record of any form of complaint being filed by the complainant.

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- 3. Provide copies of any and all Documents relating or referring to each broadcast referred to in the response to Inquiry 1 above, and of any and all other Documents that provide the basis for or otherwise support the responses to Inquiries 1 and 2 above.**

See Exhibit 2. This Exhibit contains copies of the e-mails concerning the program which GPTC found in its search in response to the Commission letter. Although it is the policy of the Member and Audience Services unit to preserve records of all correspondence, telephone calls and e-mails, the GPTC does not have a system-wide process for deleting or retaining e-mail documents. Rather, each employee can delete e-mail he or she receives at their discretion; thus, it is possible that some additional e-mails received concerning the program may have been deleted by a recipient.

Sincerely,



Nancy G. Hall
Interim Executive Director

cc (w/enc.): Ms. Julie Entrekin
Elizabeth Valinoti, Esq. (w/o DVD)

HENRY VIII - PART ONE

ACTION

DIALOGUE

Start Timecode 10:00:00

Night. Guards march through the palace, they
carry lit torches

New Scene 10:00:10

Music in 10:00:10 - Specially Composed by Rob Lane - Duration 01:19

Night. Ext view of palace over river, lit by
torches

Caption

"Richmond, England 1509

New Scene 10:00:15

The King's bedchamber. He is dying. The
room is filled with Courtiers
Young Henry steps to his father's bedside

Physician: It is time

Henry VII: Arthur?

Young Henry: No father, Arthur is dead. It is me,
Henry

Henry VII: Ah, Henry. Your brother's widow,
Katherine, you must take her as your wife.
England needs Spain

Young Henry: Yes father

Those standing in the shadows of the room
shift uncomfortably

Henry VII: There are many who would usurp the
throne, watching and waiting in the shadows

Young Henry: I am ready

Henry VII: Are you? Then tell me, what is the
most important thing to do when you are King?

Animated, excited

Young Henry: Make glorious war father.
Recapture the spirit of Agincourt. Expand the
territories in France. Keep the Scots at bay.
Deepen the treasury

Young Henry doesn't answer

Henry VII: But what else? To be a really great
King, there is one thing you must do above all
others. You must secure the family line. Have a
son

He reaches up to touch his son's face and
breaths his last

HENRY VIII - PART ONE

Music in 10:02:04 - Specially Composed by Rob Lane - Duration 01:27

Wolsey removes the ring from the finger of
Henry VII and places it on that of the new
King - Henry VIII

Wolsey: The King is dead

RAY WINSTONE

Courtiers: Long live the King

HELENA BONHAM CARTER

All present kneel before their new King

Front Titles Start 10:02:18

HENRY VIII

Henry followed his father's wish
and married the Spanish princess,
Katherine of Aragon

After 15 years on the throne
Henry is one of the most popular
Kings in history

But he is still without a male heir...

New Scene 10:02:38

Three riders gallop across the English
countryside

CHARLES DANCE

EMILIA FOX

MICHAEL MALONEY

New Scene 10:02:56

And through woodland

ASSUMPTA SERNA

MARK STRONG

DAVID SUCHET

New Scene 10:03:11

They arrive a large country house

DANNY WEBB

HENRY VIII - PART ONE

AND JOSS ACKLAND

New Scene 10:03:22

One dismounts and enters the house. A
servant greets him

Servant: She's still in labour. She's still in labour

EXECUTIVE PRODUCER
ANDY HARRIES

The rider kneels to pray

EXECUTIVE PRODUCERS
REBECCA EATON

In the bedchamber a woman is in the throes
of labour

Midwife: Push. Push

JUSTIN BODLE

Midwife: One more. One more

PRODUCER
FRANCIS HOPKINSON

Music in 10:03:42 - Specially Composed by Rob Lane - Duration 00:24

The baby is delivered. The midwife smiles
and nods at the servant who delivers the news
to the rider

Servant: It's a boy. It's a healthy boy

WRITTEN BY
PETER MORGAN

Messenger: God save the King

New Scene 10:03:56

The messengers ride away

DIRECTED BY
PETE TRAVIS

New Scene 10:04:02

Day. Ext palace

New Scene 10:04:07

Inside the great hall King Henry is in
the centre of a large crowd of Nobles and
Knights. He is now an incredibly handsome
and powerful man in his late 30s

Henry: ...I said, so the King of France wishes
to settle one of the richest provinces in the
kingdom over a game of chequers. I didn't have
the heart to tell him that when I was a child, I

HENRY VIII - PART ONE

Much laughter and cheering
The messengers arrive. Henry receives their
whispered news. He is more than pleased

played nothing but chequers, and if we'd have
actually played, I would have given him a terrible
beating. So, I let him keep the bloody place. In a
couple of years, I'll send Norfolk back there to
take it back

New Scene 10:05:01

He strides along a corridor and burst into
Wolsey's office

Henry: Congratulate me Wolsey, I am father of a
baby boy

Kneeling and taking the King's hand

Wolsey: Your Majesty

Much laughter in the room

Henry: A healthy baby boy. I have named him
Henry Fitzroy. As for his mother, the Blount
girl, we shall give her land and money. And as
for the boy, he shall be properly educated and
have a princely household supervised by
Seymour here, and I will confer upon him the
titles of the Duke of Richmond and Somerset.
And you, Thomas, you shall be the boy's
Godfather. That is if you have no objections, as
Cardinal, to be Godfather to a bastard as well as
being father to several of your own

Taking Wolsey aside

Wolsey: It would be an honour Sir

Henry: Yes, well Thomas, it seems that I am
capable of having a son after all. And now I
have done my side of the business, you must now
do yours

Wolsey: And what is that?

Henry: Legitimise him. Legitimise him and give
him the succession

Wolsey: I beg you no. The people would never
accept him...

Henry: They will do what I say. I am their King

Wolsey: It would have terrible political
consequences. For Spain it would be as good as a
declaration of war. Your son would have a
lifelong enemy in Mary, your daughter. The
Country would be split into two...

HENRY VIII - PART ONE

Henry: What do you suggest then?

Wolsey: I suggest that you keep trying for a legitimate son with the Queen

Henry: Please, I can't, we've been trying for fifteen years Thomas

Wolsey: But your luck will surely change soon

Henry and his Courtiers leave the room
Wolsey calls Cromwell to his side

Wolsey: Master Cromwell? I want you to establish if the Queen still bleeds

Cromwell: I will speak to her physicians

Wolsey: The King needs and heir, and soon.
While he doesn't have one, his enemies plot his downfall

Music in 10:07:01 - Specially Composed by Rob Lane - Duration 01:33

Cromwell leaves Wolsey to his thoughts

New Scene 10:07:05

Night. Ext. Duke of Buckingham's Castle

New Scene 10:07:09

Inside, a group of Nobles sit in a circle around the fire. One of the servants is paying particular attention to the conversation

General agreement

One by one the Lords stand and raise their tankards

Buckingham: Sirs, these are sad times, we have a King, with no legitimate right to be King. A butchers son for a Cardinal, who forces us into alliances with France and Spain. It's time we sent them both to their graves and put a rightful heir, a Plantaganet, back on the throne of England. So, Lords, are you with me?

All: Aye. Aye

Buckingham: So go back to your estates, prepare your armies, and meet me outside London in three days

New Scene 10:08:07

Wolsey's office. The servant is making his report

Wolsey: So, Buckingham, Derby and Wiltshire. Who else?

HENRY VIII - PART ONE

Servant: Lord Montague, Sir. And Lord
Abegevanny

Wolsey: A powerful group. You may go

New Scene 10:08:35

Music in 10:08:42 - Specially Composed by Rob Lane - Duration 02:21

The Queen's bedchamber. The Queen kneels
in prayer

Henry: Come on Katherine. Come to bed

Katherine: I am praying to Casilda of Toledo,
Patron Saint of Fertility, for her intercession.
Next week, I begin another pilgrimage to
Walsingham

She starts to undress. He notices the
garment that she has been wearing under her
clothes

Henry: Come here. Be a woman to your man.
What is this?

Katherine: A hair shirt, my Lord

Henry: Why?

Katherine: I just want God to take pity on me and
answer my prayers

She sits next to him

Henry: Your skin is so raw. It's drawn blood

Katherine: It doesn't matter. The suffering will
be worth it in time. Now, let me give you a son.
Husband

He kisses her gently

Henry: Katherine. Katherine

Katherine: I just want to be a good wife

Henry: You are

Katherine: I just want to make you happy

Henry: You do. Have we not been happy these
past fifteen years

Crying

Katherine: Yes

Henry: Yes

Katherine: But why? Why does God punish us
this way. Why? Why?

HENRY VIII - PART ONE

Henry: I don't know, Kate. I don't know

New Scene 10:10:59

Dawn. Ext Castle

Caption

Hever Castle. The Boleyn Family Home

New Scene 10:11:04

Music in 10:11:04 - Specially Composed by Rob Lane - Duration 01:27

Inside. A young couple celebrate with friends
and family

Norfolk: Congratulations, Thomas. Your
daughter's done you proud

Sir Thomas: I shan't celebrate until the ring is on
her finger. I hear the boy's father, the Earl of
Northumberland, is still against it

Norfolk: Don't worry about him. I have the
King's ear on this. He's assured me he'll grant
you his blessing

George and Anne Boleyn dance together

George: Well, Anne? One of the highest-ranking
noblemen in the land, snared by a humble
Knight's daughter from Kent

Anne: You sound surprised, Brother

George: I am. You must admit the odds were
against you

Anne: Percy is marrying me, Brother, because he
loves me. And because I've learned how to
please a man

George: And you? Do you love him?

Anne: A lot of dangerous lies are spoken about
love. What I want from Percy is security. And
when I look at our poor sister, Mary, who made
the mistake of loving our King. Well, I realise
how precious that security is

New Scene 10:12:32

Music in 10:12:35 - Specially Composed by Rob Lane - Duration 01:23

Ext. Night. Buckingham and his gang ride hard
through the night

HENRY VIII - PART ONE

New Scene 10:13:07

Dawn. They arrive and camp on the outskirts of a thick forest. They wait

Buckingham: So, where are they

He looks up at the sound of approaching horses

Lieutenant: They'll surely be here my Lord. There, Derby's banner. He comes

Buckingham: Excellent

Pointing in another direction

Other Lieutenant: And from here, Wiltshire

Buckingham: Welcome, one and all

The first horseman comes into view. He is dead. Tied to his horse. The second horseman is the same. Buckingham's men draw their weapons and look around. A blazing arrow flies upwards, into the sky. Arrows and axes fly from the trees and Buckingham's men are wiped out within a few minutes by Henry VIII's army, hidden there

Buckingham: Good God

Music in 10:14:25 - Specially Composed by Rob Lane - Duration 01:47

Buckingham stands alone. The sound of many feet as the soldiers march towards Buckingham. Henry VIII arrives on horseback. He indicates that they should stand back. He dismounts and approaches Buckingham

Henry: So, my father was right. He warned me against you

Buckingham: He had a bad conscience. Ours is a legitimate claim to the throne, as well you know

Henry: My father saved this Country when your degenerate ancestors left it in ruin. Now, I accepted that you were a descendant of the Plantagenets, I gave you land and titles as your compensation. But obviously, that was not enough for you. Here. Take it. Take it. But you'll have to kill me first

He holds out his ring. Buckingham reaches for it. Then stops and withdraws. Henry turns his back and starts to walk away. Buckingham draws his sword and tries to kill the King but Henry disarms him and holds his own sword to his throat before pushing him to the ground

Henry: Take him to the Tower

New Scene 10:16:27

HENRY VIII - PART ONE

In the Tower. Buckingham is being tortured

New Scene 10:16:42

In the gardens

Henry: The good Cardinal does his work well

Katherine: The Cardinal enjoys his work too much to be good. I don't like him, and I don't like the power he has over you

Henry: Thomas is a loyal subject, who does what is required of him. Unlike certain people

Katherine: If his Majesty is referring to me, perhaps he has forgotten I have carried six of his children

Henry: Five of which were born dead and one is a daughter, which is of no use to me

Katherine: That is not my fault

Henry: Whose fault is it then? I am capable of having sons

Katherine: That you are capable of sowing bastards up and down the Country is well known

Henry: And why, Madam? Ask yourself that This Country needs stability. It needs a male heir. Without one the throne is at risk

New Scene 10:17:31

Music in 10:17:31 - Specially Composed by Rob Lane - Duration 01:09

Day. Ext Castle

New Scene 10:17:38

Inside, a great crowd of Nobles are gathers, awaiting the King. The fanfare sounds and the crowd bows. Henry looks down at them from the gallery

Henry: Must I do this Thomas?

Wolsey: It won't take long my Lord, and it's a useful way to buy allegiances

Henry: Is everything political?